

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INGRAM MOORE	: CIVIL ACTION
	:
v.	:
	:
FRANK GILLIS, et al.	: No. 99-4739

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 14, 2000

Petitioner Ingram Moore ("Moore" or "petitioner") filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254. By order of October 4, 1999, the court referred the petition to United States Magistrate Judge Thomas J. Rueter ("Judge Rueter"). Judge Reuter filed a Report and Recommendation for dismissal of the petition; Moore filed written Objections to the Recommendation, and the Commonwealth filed a Response to Petitioner's Objections. After de novo review of the Report and Recommendation, the Report and Recommendation will be approved and the Objections will be overruled.

BACKGROUND

Moore was convicted in the Court of Common Pleas of Philadelphia County of murder in the first degree and possessing an instrument of crime.¹ Moore was sentenced to life imprisonment for the murder conviction and two and one-half years for the possession conviction, to run concurrently. Moore,

¹The facts set forth in this procedural history are adopted from Judge Rueter's Report and Recommendation.

appealing to the Pennsylvania Superior Court, claimed:

1. The evidence was insufficient to support a conviction of first degree murder because the Commonwealth failed to disprove the defense of voluntary intoxication;
2. The prosecution improperly used an incriminating hearsay statement at trial without notice to defense counsel and appealed to the passions and prejudices of the jury by referring to the impact drugs have had on society; and
3. Defense counsel was ineffective in failing to use prior inconsistent statements to impeach Commonwealth witnesses and not pointing out those inconsistencies in closing arguments.

On July 2, 1997 the Superior Court affirmed Moore's conviction. Moore subsequently filed a petition for allocatur with the Pennsylvania Supreme Court. Allocatur was denied on December 9, 1997. Moore did not seek collateral review under Pennsylvania's Post-Conviction Relief Act ("PCRA").

Moore delivered his pro se petition for a writ of federal habeas corpus to prison officials on September 7, 1999. The petition was filed with the Clerk of Court on September 23, 1999. The petition contained the same claims presented to the Pennsylvania Superior Court and the Pennsylvania Supreme Court.

The Commonwealth responded that Moore's claims were time-barred.

DISCUSSION

A petition for federal habeas corpus must be filed within a year of the date on which: 1) the conviction became final; 2) an impediment to filing created by an unlawful State action is

removed; 3) the constitutional right being asserted was recognized by the Supreme Court and is applied retroactively; or 4) the factual basis for the claims could have been discovered by due diligence. See 28 U.S.C. § 2244(d)(1). If a petition for state post-conviction or collateral review is properly filed, the statute of limitations is tolled during the pendency of the petition for collateral review. See 28 U.S.C. § 2244(d)(2).

Moore's conviction became final on March 9, 1998, 90 days after the Pennsylvania Supreme Court denied allocatur and Moore did not seek certiorari in the United States Supreme Court. See Kapral v. United States, 166 F.3d 565, 575 (3d Cir. 1999). The statute of limitations began to run on March 9, 1998. Moore's petition for federal habeas review was deemed filed for the purposes of the statute of limitations on September 7, 1999, when Moore delivered the petition to prison officials to mail to the district court. See Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Moore's petition was filed approximately six months after the statute of limitations expired on March 9, 1999.

Moore did not provide argument or evidence supporting the statute of limitations running from a date later than the date his conviction became final.

Moore claims that he attempted to file for PCRA review numerous times after his conviction, but there was no evidence of this and Judge Rueter understandably found to the contrary.

Moore also claims that equitable considerations require that his petition be decided on the merits. Equitable tolling of the statute of limitations for federal habeas corpus applies only when the petitioner exercised due diligence and was prevented in some extraordinary manner from bringing his claims. See Miller v. New Jersey State Department of Corrections, 145 F.3d 616, 618-19 (3d Cir. 1998). Moore has made no showing of due diligence or any extraordinary bar precluding his asserting his claims timely.

Moore's petition for federal habeas corpus relief is time-barred and unreviewable. Judge Rueter's report and recommendation will be approved and adopted, and the petition for a writ of habeas corpus will be denied.

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ORDER

AND NOW this 14th day of July, 2000, after careful and independent consideration of the amended petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, after review of the Report and Recommendation of Magistrate Judge Rueter, and petitioner's Objection of Magistrate Report and Recommendation, and in accordance with the attached memorandum,

it is **ORDERED** that:

1. Petitioner's Objection of Magistrate Report and Recommendation is **OVERRULED**.
2. The Report and Recommendation of Magistrate Judge Rueter is **APPROVED** and **ADOPTED**.
3. The petition filed pursuant to 28 U.S.C. § 2254 is **DENIED**.
4. There is no basis for issuance of a certificate of appealability.

Norma L. Shapiro, S.J.